the estate in a proper case for such fees as are reasonably necessary, *Sprinkle* v. *Forrester, supra; In re Sawyer's Estate,* 124 Iowa 485, 100 N. W. 484; *Davidson* v. *Sibley,* 140 Ga. 707, 79 S. E. 855, but not if the employment of the attorney was improper or the fees excessive. *In re Bullion's Estate,* 87 Neb. 700, 128 N. W. 32. He is also liable to the beneficiaries under the will for a proper administration of the estate and ordinarily the advice of counsel will not protect him in case of mismanagement. *Young* v. *Alexander supra; In re Bullion's Estate, supra.* In view of the personal liability for the proper management and conduct of the administration, and the advice and assistance of counsel being for his own protection, and the fact of his being personally liable to them for their compensation, the administrator or executor has the right to select and employ his own counsel, without regard to the wishes of the testator. *Young* v. *Alexander supra; In re Ogier, supra; In re Picket's Will,* 49 Ore. 127, 89 Pac. 377; *Foster* v. *Elsley,* L. R. 19 Ch. Div. 518, 30 W. R. 596.

Though it is well settled that a testator is entitled to select his executor, so that the probate court has no discretion to reject the person selected in the absence of some common-law or statutory disability, as he derives his powers from the will itself, *In re Bergdorf's Will,* 206 N. Y. 309, 99 N. E. 714; *Appeal of Smith,* 61 Conn. 420, 24 Atl. 273, 16 L. R. A. 538; *Holladay* v. *Holladay,* 16 Or. 147, 19 Pac. 81, yet it does not at all follow that the appointment by a will of an attorney for the executor is binding. The reason for the unenforcibility of such an appointment is obvious from the manifest injustice that would be done the executor in rendering him liable for the attorney's fees and any loss occasioned by such and at the same time denying him the right to choose the attorney.

FEDERAL EMPLOYERS' LIABILITY ACT—INSTRUCTIONS—DAMAGES.—In an action brought under the Federal Employers' Liability Act, for the benefit of the widow and infant children of the deceased, the court instructed the jury that the pecuniary injury suffered in such a case was much greater than when the beneficiaries were all adults or dependents who are mere next of kin. *Held,* the giving of such an instruction is a reversible error. *Norfolk & Western Ry. Co.* v. *Holbrook,* 35 Sup. Ct. 143.

In an action under the Federal Employers' Liability Act the beneficiaries can recover their pecuniary loss and nothing more. *Michigan Cent. Ry. Co.* v. *Vreeland,* 227 U. S. 59; *American Ry. Co.* v. *Didricksen,* 227 U. S. 145; *Gulf, etc., Ry. Co.* v. *McGinnis,* 228 U. S. 173. And it is well settled that the rules by which damages are to be estimated should be laid down by the court, and it is the duty of the court to explain to the jury the basis on which the assessment should be made. *Chicago, Evanston, etc., Ry. Co.* v. *Adamick,* 33 Ill. App. 412; *Baltimore & O. Ry. Co.* v. *Carr,* 71 Md. 135, 17 Atl. 1052. The relationship between the beneficiaries and the deceased should be taken into consideration in computing the pecuniary loss, and an infant child of the deceased would ordinarily suffer greater damage than an adult beneficiary, or mere

next of kin; since a child can recover the loss of that care, counsel, and training which might have been reasonably expected from a parent. *Tilley* v. *P. Ry. Co.*, 29 N. Y. 252. While the loss of the society and companionship of a son by a father is not such a pecuniary loss. *American Ry. Co.* v. *Didricksen, supra.* And a wife cannot recover for the loss of her husband's society. *Atchison, T & S. F. Ry. Co.* v. *Wilson* (C. C. A.), 48 Fed. 57. Furthermore it is necessary to show that a beneficiary who is a mere next of kin was dependent on the deceased before any recovery can be had under the statute, while this is not necessary in the case of a surviving widow or children. *35 Stat. at L. 65, Chap. 149; U. S. Comp. Stat. 1913, § 8657.* But when as in the principal case, the beneficiaries are a widow and infant children, there are no beneficiaries which fall under the head of next of kin, and an instruction on an abstract proposition involving beneficiaries under the head of next of kin is without the issue, and as such an instruction is calculated to mislead the jury it should not be given. *B. & O. Ry. Co.* v. *Ferris*, 94 Va. 82 26 S. E. 406. And it has also been held in actions brought under the Federal Employers' Liability Act that an instruction, which throws the door open to speculation and is such that the jury is no longer confined to a consideration of the financial benefits which the actual beneficiaries have received from the deceased, is erroneous. *Michigan Cent. Ry. Co.* v. *Vreeland, supra; Norfolk and Western Ry. Co.* v. *Holbrook, supra* (principal case). But instructions to the jury should be read as a whole and if objectionable expressions in the charge are explained and qualified by other parts of it, so as not to work injustice on the party objecting, the use of such expressions will not be ground for reversal. *Baltimore & P. Ry. Co.* v. *Mackey*, 157 U. S. 72, 39 L. Ed. 624. And a criticism of words will not be indulged in when the meaning of the instructions is plain and obvious and cannot mislead the jury. *Rogers* v. *The Marshal*, 1 Wall. 644, 17 L. Ed. 714; *Evanston* v. *Gunn*, 99 U. S. 660, 25 L. Ed. 306.

HIGHWAYS—OBSTRUCTION—SUIT BY PRIVATE PERSON.—The defendant erected buildings and fences on a public highway. On account of these obstructions the plaintiff was compelled to take a longer and circuitous route on his trips to town. He brought suit to enjoin this obstruction of the highway. *Held,* no injunction will lie, since the plaintiff had suffered no special damage. *Borton* v. *Mangus* (Kan.), 145 Pac. 835.

The obstruction of a highway is a public nuisance, and the remedy for it is ordinarily a public prosecution. *Thayer* v. *Boston*, 19 Pick. 511, 31 Am. Dec. 157. Before a private person can maintain an action for such a nuisance, he must have sustained some special damage. *Thayer* v. *Boston, supra; Storm* v. *Barger*, 43 Ill. 173. It is commonly said that the damage must be different in kind from that suffered by the general public, mere difference in degree not being sufficient. See *Hartshorn* v. *Inhabitants of Reading*, 3 Allen 501; *McCowan* v. *Whitesides*, 31 Ind. 235. This test, however, is somewhat difficult of application, as the diversity of the holdings on the subject show. Whether a person suf-